

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GORDON K. GABRIELSON,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-164

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from a denial of an application to take an examination for waste water treatment plant operator IV, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana (presiding), in Seattle on December 11, 1980.

Appellant was represented by his attorney, Richard A. Mattsen; respondent was represented by Wick Dufford, assistant attorney general.

Having heard or read the testimony, having examined the exhibits, and having considered the contentions of the parties; the Board having issued its proposed order on December 30, 1980, and having received

1 exceptions thereto and replies to exceptions; and the Board having
2 considered and denied the exceptions, the Board now makes these

3 FINDINGS OF FACT

4 I

5 Appellant is the manager of the West Division waste treatment
6 plant which is one of several¹ treatment plants operated by the
7 Municipality of Metropolitan Seattle (METRO). The West Division plant
8 is categorized as a class IV plant by respondent in WAC 173-230-140.
9 Such a classification places the plant in the highest class assignment
10 in the state.

11 II

12 As manager of the West Division, appellant is responsible for the
13 proper management of the plant. His duties do not require him to
14 personally operate any portion of the treatment system although he can
15 instruct operating personnel to do physical acts which could affect
16 the operation of the system. In his relevant experience, appellant
17 has not actually operated a waste treatment plant and has not had
18 responsible charge as an operator for the actual operation of a waste
19 treatment plant. While manager of the West Division, appellant has
20 had managerial responsibility for the entire plant.

21 III

22 Appellant's experience relative to sludge utilization does not
23

24 1. Although not material to the outcome of this case, the
25 attorneys agree that there are three treatment plants. Mr. Gabrielson
26 mentioned five. Transcript Page 60 lines 10-14.

1 involve the actual operation of a plant. Such experience was credited
2 to appellant to satisfy a portion of the experience requirement for
3 which equivalent experience could be credited.

4 IV

5 Respondent's director has adopted rules relating to the
6 certification of operators of waste water treatment plants in
7 ch. 173-230 WAC. Such rules do not set forth criteria regarding
8 "experience" or "responsible charge" as necessary requirements for
9 qualifying to take the class IV operator examination. These
10 requirements are found in Department of Ecology publication DOE 80-3.
11 The publication has not been adopted as a rule in accordance with
12 ch. 34.04 RCW by any state agency. Appellant has had actual notice of
13 the publication and criteria therein prior to his application to take
14 the group IV examination.

15 V

16 Publication DOE 80-3 requires that all applicants for examination
17 in group IV classification meet as a minimum, four years of college or
18 university education, four years of acceptable operation or equivalent
19 of a Class III or higher treatment system, two years of which must be
20 actual on-site operating experience, and two years of responsible
21 charge time. Allowance is made for equivalents for education,
22 experience, and responsible charge time. Section 6.6.

23 VI

24 Appellant has been credited for the maximum equivalent experience
25 and equivalent responsible charge time. He does not have two years of

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1 actual on-site operating experience and one year of such experience in
2 responsible charge in a Class III or higher plant. Consequently
3 appellant does not qualify for taking the examination for Group IV
4 operator according to Publication DOE 80-3.

5 VII

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 For purposes of this matter, respondent's decision was agreed by
12 the parties to be a decision of the director of the Department of
13 Ecology and reviewable by this Board.

14 II

15 Respondent has the authority and duty to adopt and enforce rules
16 which provide for the qualification and certification of operators for
17 different classifications of waste treatment plants. RCW 70.95B.040.
18 The plants are to be classified according to size, type, and other
19 conditions affecting the complexity of the plant, and the skill,
20 knowledge and experience required of an operator to supervise the
21 operation of the plant to protect the public health and state's water
22 resources. RCW 70.95B.050. Respondent clearly has authority to
23 require a certain level of experience of operators before they may
24 qualify to operate a particular category of waste treatment plant.

25 The definition for "operator" means an individual designated as

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1 "the person on-site in responsible charge of the actual operation of a
2 waste treatment plant." RCW 70.95B.020(b). Respondent's authority to
3 certify "operators" certainly would permit respondent to adopt
4 reasonable rules relating to operator qualification with respect to
5 experience involving responsible charge of a plant.

6 III

7 Section 6 of Publication DOE 80-3 attempts to establish
8 qualifications or standards for the issuances of licenses in a trade
9 or profession and is a "rule" within the meaning of RCW 34.04.010(2).

10 A certificate issued by the director pursuant to ch. 173-230 WAC
11 is a "license" within the meaning RCW 34.04.010(4).

12 Section 6 of Publication DOE 80-3 does not have the effect of a
13 valid rule because it was not adopted in substantial compliance with
14 RCW 34.04.025. Section 6 has not been published by the code revisor
15 and is not effective as a rule. RCW 34.04.027.

16 Respondent's criteria in Section 6 of Publication DOE 80-3 are
17 rules and should be adopted as rules with an opportunity for public
18 input. Respondent's citation to authority which may indicate
19 otherwise is not persuasive. Respondent is a state agency created by
20 the legislature and subject to the mandates of the legislature in
21 ch. 34.04 RCW.

22 IV

23 The Department of Ecology rules, in ch. 173-230 WAC, make
24 certification available to all "operators" who can meet the minimum
25 qualification of a given classification. WAC 173-230-010. A

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1 certificate issued by the director attests that the operator has met
2 the requirements for the specified operator classification. WAC
3 173-230-020(4). The wastewater operators certification board of
4 examiners created by RCW 70.95B.070, as a part of its duties, develops
5 operator qualification standards for different classifications of
6 plants and examines the qualifications of applicants for
7 certification. WAC 173-230-030(2). In order to get a certificate, an
8 applicant must file an application, successfully complete an
9 examination (unless exempted), and pay certain fees. WAC
10 173-230-050. Upon receipt of an application, the applicant's
11 eligibility is reviewed. WAC 173-230-060. Nowhere in ch. 1730230 WAC
12 are operator qualification standards explicitly set forth. However,
13 any person inquiring of the program is given information such as that
14 found in Publication DOE 80-3 on request.

15 V

16 Both the statute and regulations allow the establishment of
17 "experience" and "responsible charge - time" criteria. Respondent
18 simply has not set the criteria by rule. However, this does not mean
19 that respondent is to dispense with statutory requirements as
20 appellant suggests. It means that respondent should promptly adopt
21 rules in order to protect the public health and waters of the state.
22 See RCW 70.95B.010, .900.

23 VI

24 Appellant's appeal should be denied insofar as it seeks to require
25 the Department of Ecology to admit him to the next available
26

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1 examination. The respondent's decision should be reversed and be
2 remanded to the department for further consideration at such time when
3 valid rules, which may differ from Publication DOE 80-3, are adopted.

4 VII

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters this

8 ORDER

9 Gordon K. Gabrielson's appeal seeking admission to take the Group
10 IV wastewater treatment plant operator examination is denied.
11 Respondent Department of Ecology decision is reversed and remanded for
12 further consideration of appellant's application after rules are duly
3 adopted.

14 DONE this 30th day of January, 1981.

15 POLLUTION CONTROL HEARINGS BOARD

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17 
18 NAT W. WASHINGTON, Chairman

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20 MARIANNE CRAFT NORTON, Member

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23 DAVID AKANA, Member

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